

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) MEGAN CAPEL, Administratrix,) )  
of the Estate of Terral Brooks ) )  
Ellis, II, Deceased, ) )  
(2) TERRAL B. ELLIS, SR., and ) )  
(3) SHELLEY BLISS, ) )  
Plaintiffs, ) )  
vs. ) No. CIV-17-325-JED-FHM )  
OTTAWA COUNTY BOARD OF COUNTY ) )  
COMMISSIONERS, et al, ) )  
Defendants. ) )

VIDEO DEPOSITION OF  
DEREK DERWIN

DATE: SEPTEMBER 25, 2019

REPORTER: MARISA SPALDING, CSR, RPR

Spalding Reporting Service, Inc.  
1611 South Utica Avenue, Box 153  
Tulsa, Oklahoma 74104  
(918) 284-2017

1 play this and I'm going to ask you to direct your 16:38  
2 attention to -- it's really going to be the top right  
3 and the two bottom videos, okay? 16:38

4 A Very well.

5 (Video playing) 16:38

6 Q (By Mr. Gibbs) Are you able to see that  
7 Mr. Ellis has walked out of that holding cell, 16:39  
8 Mr. Derwin?

9 A Yes. 16:39

10 Q Okay.

11 (Video playing) 16:39

12 Q We have -- what is the room that Mr. Ellis is  
13 walking into, if you know? 16:39

14 A That's the restroom in the booking area.

15 Q Just based on your observations, did Mr. 16:39  
16 Ellis appear to have any difficulty walking?

17 A No, without a -- 16:39

18 (Video playing)

19 Q Are you able to identify the gentleman coming 16:40  
20 out of the room as Mr. Ellis?

21 A Yes. 16:40

22 Q Can you tell what's in his left hand?

23 A It looks like a cup. 16:40

24 Q Okay.

25 (Video playing) 16:41

1           Q     Do you know who the jailer is sitting at the     16:41  
2     desk there?

3           A     I believe that's Cartis Lawson.             16:41

4           Q     Okay.

5                     (Video playing)                     16:41

6           Q     Mr. Derwin, that appears, like I said from  
7     the document, to have been recorded at 8:21:25 on     16:41  
8     October 21st; is that correct?

9           A     Yes.                                     16:42

10          Q     I want to show you -- now you were asked  
11     questions by Mr. Smolen and I wrote the times down.     16:42  
12     And you probably don't recall the specific times, but  
13     he showed you video -- this -- this was at 8:18 p.m.     16:42  
14     He showed you videos from 9:34 p.m., 9:47 p.m., 9:55  
15     p.m., 10:11 p.m., 10:56 p.m. and 12:42 p.m., all on     16:42  
16     the same evening. And Mr. Ellis was complaining. He  
17     was moaning. He was advising the jailers that his     16:42  
18     legs were paralyzed. Do you recall that video and  
19     being asked those questions?                     16:42

20          A     Yes.

21          Q     I don't expect you to recall the exact     16:42  
22     timeframes, but the record will speak for itself. I  
23     want to show you the next video. Let me find it for     16:42  
24     you real quick. Okay. And as you can see --

25                     MR. SMOLEN: Hey, Jim, not to interrupt     16:43

1 MR. SMOLEN: Okay. 16:43

2 Q (By Mr. Gibbs) So, Mr. Derwin, now we're  
3 looking at it. You can see. This is on 10/22/2015 at 16:43  
4 1:37 a.m., correct?

5 A Yes. 16:43

6 Q Based on at least the time stamp on this  
7 document? 16:43

8 A Yes.

9 Q Now this is after the one, two, three, four,  
10 five, six entries that Mr. Smolen asked you about  
11 wherein Mr. Ellis was complaining that he was 16:43  
12 paralyzed, that he was moaning in pain and he had all  
13 of those problems; do you recall that? 16:44

14 A I -- I don't remember the specific times but,  
15 yes, the content, yes, I remember it. 16:44

16 Q Okay.

17 (Video playing) 16:44

18 Q Are you able to recognize who the person is  
19 in the video of the top right? 16:44

20 A Yes, that's Mr. Ellis.

21 Q Okay. Is he walking? 16:44

22 (Video playing)

23 A Yes, he just walked out. 16:44

24 Q Does he appear, at least from this video, to  
25 be in any distress? 16:45

1 MR. SMOLEN: Object to the form. 16:45

2 THE WITNESS: No, from this angle, no.

3 Q (By Mr. Gibbs) Does it appear that he's 16:45  
4 paralyzed?

5 A No. 16:45

6 Q If this video was taken after the six others  
7 that we've seen already today wherein Mr. Ellis was 16:45  
8 claiming to be paralyzed, would this video be  
9 inconsistent with that? 16:45

10 A Yes.

11 MR. SMOLEN: Objection to the form. 16:45  
12 Misstates the testimony.

13 (Video playing) 16:45

14 Q (By Mr. Gibbs) Are you able to see what he  
15 had in his hand? 16:45

16 A It appears to be a cup.

17 Q And where is he going? 16:45

18 A In the bathroom.

19 Q You were also asked about if Mr. Ellis was 16:45  
20 required to urinate on his mattress, if there was  
21 evidence of that. Does this suggest to you at least 16:45  
22 Mr. Ellis was, at least at this point in time, on his  
23 second trip to the bathroom in this -- in the past 16:45  
24 five hours?

25 A I assume -- 16:46

1 MR. SMOLEN: Object to the form. 16:46

2 THE WITNESS: I assume he's going in  
3 there to use the restroom. I... 16:46

4 Q (By Mr. Gibbs) He's at least being -- being  
5 given the opportunity, correct? 16:46

6 A Yes.

7 (Video playing) 16:47

8 Q Is that Mr. Ellis?

9 A Yes. 16:47

10 Q Is he holding a cup in his hands?

11 A Yes. 16:47

12 Q Is there water available to him inside that  
13 bathroom? 16:47

14 A Yes.

15 Q Do you hear -- and I'll play the rest of it. 16:48  
16 Well, does Mr. Ellis appear to be paralyzed there?

17 A No. 16:48

18 Q Does he appear to you to be dying?

19 A No. 16:48

20 Q And I want you to -- and listen if he appears  
21 to be making any complaints, moaning in pain, or 16:48  
22 making any other issues?

23 (Video playing) 16:48

24 Q Did you hear Mr. Ellis making any complaints?

25 A No. 16:48

1           Q     Did you hear him yelling out that he couldn't     16:48  
2     move?

3           A     No.     16:48

4           Q     Did you hear him yelling out that he needed  
5     water?     16:48

6           A     No.

7           Q     And this was, again, at 1:37 a.m. So I know     16:48  
8     you don't know the specific times, but after the six  
9     entries that you looked at where he was making those     16:48  
10    complaints, okay?

11                   MR. SMOLEN: Objection to the form. The     16:48  
12    clips were shown both on the 21st and on the morning  
13    of the 22nd.     16:48

14                   MR. GIBBS: Okay.

15                   MR. SMOLEN: Jim, I just wanted you --     16:48

16                   MR. GIBBS: No.

17                   MR. SMOLEN: I want the record to be     16:48  
18    clear.

19                   MR. GIBBS: Sure. Yeah, the last one     16:49  
20    you showed was 12:42 a.m. on the 22nd.

21                   MR. SMOLEN: No, there was a clip     16:49  
22    from...

23                   MR. GIBBS: No, you showed clips all --     16:49  
24    I wrote every one of them down.

25                   MR. SMOLEN: Okay.     16:49

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1 A Correct. 16:50

2 Q The next one I want to show you, Mr. Derwin,  
3 is at 3:22 a.m., so this is just a couple of hours 16:50  
4 later than the last one we've had.

5 A Okay. 16:50

6 (Video playing)

7 Q (By Mr. Gibbs) Now were you able to 16:50  
8 understand what he just said?

9 A No. 16:50

10 Q I'll replay it again. I believe he's saying,  
11 C.O., bathroom. 16:50

12 (Video playing)

13           A     That's what I hear.                                 16:50

14 Q Okay.

15 (Video playing) 16:51

16 Q Who is that, if you know?

17 A Mike Wiford. 16:51

18           Q     Okay.

19 (Video playing) 16:51

20 Q Do you recognize who that is coming out of  
21 the cell? 16:51

22 A It appears to be Mr. Ellis.

23 (Video playing) 16:52

24 Q Does that appear to be Mr. Ellis going into  
25 the bathroom again? 16:52



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1 A Yes. 16:52

2 Q Mr. Derwin, I've shown you three clips within  
3 about a ten-hour period that overlap the evening of 16:52  
4 the 21st and the morning hours of the 22nd. In any of  
5 these videos, did you -- did it appear to you that 16:52  
6 Mr. Derek was paralyzed?

7 MR. SMOLEN: Mr. Ellis. 16:52

8 Q (By Mr. Gibbs) Mr. Ellis, I'm sorry?

9 A No. 16:52

10 Q Did it appear to you that Mr. Ellis was being  
11 deprived of using the restroom? 16:52

12                      A                      No.

13 Q Did it appear to you that Mr. Ellis was being 16:52  
14 deprived of water?

15 A No. 16:52

16 Q Mr. Derwin, if jail staff was aware that Mr.  
17 Ellis had made these three trips where he was walking 16:52  
18 after he had claimed to be paralyzed, would those be  
19 inconsistent positions by Mr. Ellis? 16:52

20 MR. SMOLEN: Object to the form.

21 THE WITNESS: Yes, that's reasonable, 16:52  
22 yes.

23 Q (By Mr. Gibbs) Now we -- those are 16:52  
24 documented videos of Mr. Ellis walking. And if -- if  
25 my times are correct and I will accept -- ask you to 16:52